Clean Law 43: Ari Peskoe Speaks with Leah Stokes about Interest Groups, Utilities, and Clean Energy Policy, June 18, 2020

To return to our website click here.

Robin Just: Welcome to Clean Law from the Environmental & Energy Law Program at Harvard Law School. In this episode, Ari Peskoe speaks with Leah Stokes, professor of political science at UC Santa Barbara about safe, clean energy policies. We hope you enjoy this podcast.

Ari Peskoe: This is Ari Peskoe, director of the Electricity Law Initiative. I am thrilled today to be joined by Leah Stokes. Her book is Short Circuiting Policy: Interest Groups and the Battle Over Clean Energy and Climate Policy in the American States. It tells meticulously researched stories about how state clean energy policy is made and unmade. Leah, thank you so much for joining me.

Leah Stokes: Oh, thank you so much for having me on. I'm a big of what you guys do.

Ari: Thanks. I was really looking forward to meeting you in person. You were supposed to come to Harvard. Some other program was bringing you to campus. Then I thought it was very rude of them when they canceled your appearance last minute in April. I'm glad you're not holding it against us and are joining us today.

Leah: No, no, of course not. Hopefully I'll go some other future time to that fancy university up the river from MIT. That might be nice.

Ari: I hope so. I want to start by talking about electric utilities. I spend a lot of my time thinking about them, and you clearly do as well. Your book details clean energy policy history in four states: Arizona, Ohio, Kansas, and Texas. Obviously, utilities are playing a major role in each of these stories. Is it fair to say that utilities are gatekeepers to clean energy policy in states?

Leah: I would think so. These policies, as you know given all the fantastic work you do on the topic, they're really detailed. They're hard to follow. A lot of them get made in public utility commissions, which is not exactly the purview of everybody's day-to-day understanding. So utilities get a really privileged position in a low salience area. In part, they have a privileged position because they're monopolies that have guaranteed profits. In most cases, utilities are monopolies with guaranteed profits. That means that however much money they want to spend on, for example, lawyers to go to public utility commission proceedings, even lobbying legislatures, they can, in general, charge those costs to the public and recoup them. So that gives them a lot of power over the way policy gets made in the electricity space.

Ari: When you're in a legislative battle with a utility, these are multi-billion dollar companies, so they can certainly hire all the lobbyists and make all the campaign contributions. But it seems like, again, looking at a state legislature, their influence is bigger than just money it seems like, right?

Leah: Oh, yes, very much so. Money is important, for sure, in American politics, but it's not the whole story. Utilities are very old companies. They've been around for, sometimes, a hundred years, even though they may have changed their name or their ownership structure over time. It's funny sometimes trying to trace utilities over time. For example, FirstEnergy, which is in my book, they recently turned into FirstEnergy Solutions, and then they're turned into Energy Harbor. It's pretty common in the utility space for that to happen. Regardless of some of those cosmetic changes in their branding, these companies maintain really strong ties with legislators over time and with regulators too. Those relationships cannot be very easily contested by newer companies who maybe have been around for a couple of years, maybe a decade or so. They just don't have the same relationships with legislators and their staff. So it's not just a question of money. It's also influence.

Ari: Is there any trick to actually beating a utility at the state legislature, or do you just have to hope you can get something as part of the legislative bargain that happens and just recognize that the utility is ultimately going to get a lot of what it wants?

Leah: Well, in the early days of the clean energy transition, there was a trick. I call that the fog of enactment in my book. Basically when a bunch of advocates were working across the country through these networks that were funded and cultivated by the Energy Foundation, they were meeting together and trying to figure out, "Okay, how do we catalyze renewable energy and the clean energy transition?" and they were coming up with a bunch of new ideas. These were the renewable portfolio standard, the net metering laws but other things, too, like system benefits charges. They were having debates about how do we actually get policy passed.

Leah: When those laws were first passed in various states, what you'll notice is that they were not very contentious. Utilities often didn't register opposition to them, or they were busy with bigger fights, for example, over electricity restructuring, and I think a lot of utilities were caught off guard. They thought that these laws would not be as consequential as they ended up being. You certainly see that with net metering laws. When you think about the huge fight that the Edison Electric Institute and many of its member utilities have been having over net metering and then you go back and look at when those laws were passed, they were passed often unanimously, very little debate. So that ambiguity, which can be heightened during novel policy as well as in areas where you have a lot of technical changes happening quickly... Renewables were really expensive in the late 1990s, let's say, and then they ended up falling in cost way more than utilities expected. So that kind of uncertainty and ambiguity, which I call the fog of

enactment, can allow advocates to get a upper hand over their very well resourced opponents.

Ari: I love the phrase "fog of enactment." I think along with "flattening the curve," it's one of my two favorite new phrases from 2020. I look forward to using both of those phrases incorrectly whenever I can. They're just such wonderful phrases. Getting back to the RPS example, the other point here, which is related I think, is that there's this wave of legislation that happened around renewable energy in the late '90s, which is also when a lot of states were restructuring. It's almost like utilities were distracted by that and in particular by stranded cost recovery because they were looking to get essentially bailed out from rate payers as part of this process. There were, in some states, billions of dollars on the line in stranded cost recovery, and that's really what all their attention was on. So I wonder if you almost need a shiny object for the utility to focus on so it puts its efforts there and can you sneak some clean energy on the side.

Leah: Absolutely. That's a great insight. It's certainly what I discuss in the Texas case. Maybe they knew to some extent that a renewable portfolio standard wouldn't be in their interest because various companies did work to water that down in 1999 when Texas was negotiating that as part of the restructuring law. But as you say, the restructuring bill was just such a bigger negotiation. It divided various utilities, and it was just a really complicated fight. It's so interesting the way you put that, Ari, because if you think about the places right now that are passing really big clean energy laws, for example New Mexico, they are happening in the same kind of way where stranded costs are a big part of the negotiation. These utilities want a bailout, if you want to call it that, or they want payments for the money that they put into generally not great infrastructure, and they're willing to maybe overlook or not pay as much attention to things like 100% clean energy laws that was, for example, passed in New Mexico. So some of those same dynamics that we saw with restructuring are now playing out with stranded cost payments.

Leah: Right now I'm working on a new project thinking about deep decarbonization in the electricity sector, and I do think that stranded cost payments are going to end up being such a huge part of the negotiation. It may be a way that you can get utilities to agree to your clean energy targets if you're willing to buy them off, which, of course, creates moral hazard problems because right now a lot of utilities are still proposing massive amounts of natural gas infrastructure, even utilities that sometimes claim that they have big clean energy targets. For example, Arizona public service has been saying in the last few months, "Oh, we're this clean utility now." Meanwhile, their IRPs for years have proposed huge amounts of new gas, and you can see that in many other utilities across the country. So if you're telling utilities, "Hey, you made bad coal investments or bad gas investments and we're going to bail you out now," and they're still proposing new gas investments, that could create this perverse incentive for utilities to continue to waste rate payer money and also, of course, imperil the climate by continue to sink bad investments into fossil fuels.

Ari: My concern there is the costs of all of this. We know we need massive investments to transition to clean energy, and then if you're, on top of that, going to be still paying for all of these old investments, it's only going to compound the problem. Of course, cost is going to be an issue in the political process. If you're including these old infrastructure costs, it's only going to make it harder to get things done. RPS is interesting because it's still sort of the dominant policy vehicle. If you look at these 100% renewable laws, they're all still kind of that same structure. I'm wondering if you uncovered anything about where this policy idea came from and why you think it's been so resilient now for 30 years.

Leah: That's a great question, and it was a big puzzle that I went into the work with. What I discovered is that the original phrasing of the renewable portfolio standard came from a woman named Nancy Rader who wrote it as part of her master's thesis when she was at the Energy & Resources Group, ERG, at UC Berkeley in the very early 1990s. She might have graduated in 1990 or something like that. She kind of developed this idea that maybe you have a target for how much renewables you're going to have. Then she got involved with the Energy Foundation network that I was talking about alongside a lot other advocates and many other organizations like the Union of Concerned Scientists, the Environmental Defense Fund. There were lots of group participating. During that time, they would have these debates where they would get together and say, "Well, what kind of policy should we try to pass?" Nancy Rader was a big advocate for the renewable portfolio standard as was, for example, Alan Nogee at Union of Concerned Scientists at the time.

Leah: But there were other voices who were very vocal towards system benefits charges or public benefits charges which is this idea that you put a kind of rider on bills or an additional charge on bills. Then you create a fund, and then you can use that fund to pay for renewables. There were some industries that wanted to do that. For example, in California, the biomass industry had been built during the 1980s because of PURPA, the Public Utility Regulatory Policies Act, that allowed companies to become independent power producers. But they only got 20-year contracts, and a lot of those companies were running out of their contracts and were worried about how they were going to continue operating. Especially with a biomass facility, you have a fuel source, you have to keep paying for things. So they needed money.

So there were some groups, both environmental groups and companies, who really wanted the public benefits charge. But others were quite concerned with whether or not new things would be built. You see that a lot in the California history of the RPS too. The way that that state's renewable portfolio standard was designed was very clearly to catalyze new builds and not just support existing infrastructure because, of course, California has geothermal dating back to the '70s and '80s and biomass and all these other things. They could have, for example, been just wheeling in renewables from the Pacific Northwest, namely hydropower. So there were big concerns about that.

Leah:

Then the third thing they were debating was voluntary green power purchasing agreements. You see that today in the rise of community choice aggregation or voluntary green power purchasing. Again, Nancy Rader was an extremely strong opponent of that. She wrote these reports. I think it was Green Buyer Beware, about how not a lot of new stuff was getting built. So the renewable portfolio standard really emerged as a way to get new stuff built. I think one of the theories was that if you can catalyze a new industry, you can start to a) create new advocates who can hopefully get the law expanded over time. Even if you only want 15% clean energy or 10%, a small number, hopefully you'll create a positive cycle. Secondly, through innovation and what we call the learning curve, the more you build wind energy or solar energy, the more costs will fall. That certainly is what has happened. The cost of wind and solar have fallen precipitously since renewable portfolio standards have been adopted across the country.

Ari:

I want to talk a little bit about those new advocates. I think the phrase in your book is "interest group combat." Is that right?

Leah:

Yeah, organized combat. It's a term from Jacob Hacker and Paul Pierson's work, yeah.

Ari:

So my non-empirical observation from looking at older public utility commission orders from decades ago and comparing to what happens now is that it does seem like there are more groups involved in rate proceedings and planning exercises, etc. But I'm wondering, is it just the same interests but now they just have created more groups representing the same interests, or are there actually new interests being represented at the table? I'm wondering what you make of the expansion of the number of players in these proceedings.

Leah:

Great question. The definitive work on that topic, I would say, is a book by Richard Hirsh, a historian of electricity and energy. It's a book called Power Loss. It's a really fantastic work. He has this concept called the utility consensus, and I write a bunch about his work in the third chapter of my book, which is a historical chapter of the electric utility industry and how it's changed over time. The basic point is that in the early 20th century when utilities came up with this idea of exclusive franchise rights, monopolies, what they did was they bargained to create public utility commissions and that there would be a regulatory oversight to their monopoly. That happened at the state level, and it created what Richard Hirsh calls a utility consensus, which was these companies are generally doing a good job. The more that they build larger and larger plants, the more electricity costs fall. That, of course, is great because we need

electricity to power our economy. So a lot of regulators just deferred to utilities up to the mid-20th century.

But what Richard Hirsh shows, and what I also show in my book, is that various things started to erode that consensus, and exactly as you say, Ari, a lot of other interests and advocates started to enter the process. So one thing that utilities and their regulators were not paying attention to was environmental pollution. The way the utility system was being built was through larger and larger centralized plants. For example, there was a movement away from industrial co-generation on site with facilities that needed both steam and electricity, which is a much more efficient process because you don't lose all of that steam as waste. Utilities really pushed those industrial co-generation plants out of existence. If you think about the entire system, that led to a lot more fossil fuels being burned over time.

Even though we know utilities knew about climate change dating back to at least the 1970s, probably earlier, I'm working on a project right now on that topic and I show a lot of the evidence about what utilities knew about climate change and when in my book, rather than taking that on, they started to promote climate denial. Electric utilities were as involved as fossil fuel companies in groups like the Global Climate Coalition, a climate denial campaign. So the utilities were no longer serving the public interest in a bunch of ways. Of course, the other thing that started to happen in addition to environmental pollution rising as an issue is that rates started to go up. So regulators couldn't just defer to utilities as much, and they had to start to say, "Hmm, why are rates going up? How can we keep them lower?" That is, in part, where the pressure came to do electricity restructuring.

Yes, there's a lot more interest at the table: consumer advocates, environmental groups, even economists pushing for things like more market integration into electricity regulation. So there has been a big rise in new actors, and that has created more conflict in the system. However, utilities still maintain a privileged position for the reasons that we've talked about. They have those guaranteed monopolies and profits. They have very strong regulator relationships. Regulators often defer to them. Even some pretty pernicious things like, for example, in the Arizona case in my book, the utility literally was asked by the public utility commission to go figure out, well, what is the benefit of solar, and is there a cost shift? There was never an evidentiary hearing done through the commission in an independent way. It was literally just outsourced to the utility, which ran a meeting in its own offices. So there is still a deference that is really strong towards utilities, and you see this in IRP planning processes. You see it in net metering proceedings around cost shift calculations, for example. That means that environmental advocates, consumer advocates, they don't have the same voice in the public utility commission process.

Ari:

I think because these various interest groups are approaching the problem from different perspectives, they're not united on these issues. You talk about interest group fragmentation, which even when groups are united and that you'd think they would be working on the same thing, you still have, in some cases, two or three different environmental groups there, two or three different renewable energy advocates there. I'm just wondering what you make of these multiple voices in these proceedings. Because sometimes I wonder, when I go through these filings, it's frustrating sometimes to me why these groups just don't come together, whether having six filings making the same argument is better than one filing from six groups all making a united front against the utility. I'm wondering if the utility, you think, actually draws strength from basically dividing up its opponents, bringing all comers, but then not having a united front against it, if that ultimate helps the utility in this interest group combat that it's involved in.

Leah:

Absolutely, and that's a point that I make in the book, as you say. If you look, for example, at the Texas case, they had an industry association called TREIA at the time, the Texas Renewable Energy Industries Association. That association represented wind and solar and large-scale solar and small-scale solar and lots of different industries. So when it came time to take positions on bills or intervene in proceedings, they were very ineffective because they just didn't have that cohesion.

When you compare that to, for example, the opponent groups in Texas, these are fossil fuel industry associations basically. The Texas Industrial Energy Consumers, TIEC, is one example, and the Texas Association of Manufacturers, TAM, is another one. These are groups of fossil fuel companies and other allied industries. They are really effective at pooling their money together, hiring a top lobbyist, deferring to that lobbyist, and often deferring within their membership to the most impacted sector. So if you've got a proceeding that's going to affect oil and gas but you're in an association of manufacturers so you've got a bunch of other kinds of companies there, often what they do is they'll say, "Well, look. We're going to let oil and gas lead this." You just don't see that same level of cooperation from renewables groups. They're really bad at coordinating their work.

That being said, as resources grow, they often get better at it. For example in Kansas, the wind industry got relatively mature during the time period that I study in my book, and there is an association called the Wind Coalition, which operates in Texas and, I believe, Oklahoma and Kansas. They got very coherent. They had top lobbyists in Kansas. They were able to field, for example, public opinion polls, big campaigns with grassroots groups. They even had a political action committee that, for example, intervened in elections when their allies, Republicans who supported clean energy, were being attacked by the fossil fuel industry. So when you start to get more maturity in an

industry, it can get better at investing in political action and get stronger.

However, as policies start to go away because they get attacked by opponents, utilities, resources go away. In those kinds of scenarios, you often see fragmentation. You see that very clearly in Arizona, as the Arizona Public Service and other utilities in that state started to attack solar residential companies, that they started to really fragment and did a much worse job defending the policy against later rounds of attacks. So cohesion is a very big variable. When you think about the Edison Electric Institute or the American Petroleum Institute, these are really effective industry associations that are a hundred years old, and they know how to maintain cohesion when they need to.

Ari:

You talk about another aspect of this organized interest group combat. The cohesion part is really interesting. That as it matures, there is some effort to come together. But it seemed like what you're also writing about is that it also drives polarization. That's the part I found deeply troubling. Is that related to cohesion? That in other words, people are just taking sides and just becoming more entrenched in their positions. How does that relate, the cohesiveness but at the same time also driving polarization?

Leah:

Many Americans probably recognize that our politics have become more polarized, and climate and energy are some of the most polarized areas actually. What people may not realize is that polarization is actually asymmetric. What does that mean? It means that the Republicans have moved farther and farther right, but the Democrats have stayed about the same place. So when people say, "Oh, it's just all this partisanship and everybody just won't agree," empirically, this is just not true. Republicans are moving to the right. Democrats are mostly staying in the same place.

Now, where does that polarization come from on the right? There are lots of theories of that in political science. What I add to that debate is that I say that interest groups are a really key driver of polarization, and I show how that plays out in the climate and electricity space. The way it works is that let's say you're a politician. You could be a legislator, or in the cases of some public utility commissions that are elected, you could be a commissioner. You're running for reelection. Well, let's say you just voted recently to keep in place net metering or you voted against putting fixed fees on solar residential customers or you voted against rolling back a renewable portfolio standard.

What fossil fuel companies and electric utilities often do is that they'll go to those Republican politicians who voted for clean energy, and they'll say to them, "You're on the wrong side of this issue. If you don't straighten up and fly right, we are going to take money away from you for your next election, and you might even find yourself with a well-funded primary challenger." We know that because, for example, in Kansas there

was a Republican politician named Scott Schwab who literally wrote this down in an email, that Koch Industries was going around, leaning on Republicans, telling them, "You'd better vote to rid of this renewable portfolio standard." In the cases when some Republicans stood their ground and said, "No, wind energy is bringing money to my rural district. It's bringing tax revenues into schools in my area. I'm going to support wind energy," they did indeed find themselves with a primary challenger and with a lot of lost money.

In the Kansas case, the Wind Coalition, which fielded its own political action committee, helped supplement some of the lost campaign contributions for those Republican politicians. But this sends a signal to all the other Republicans that if you want to die on that hill, you are going to face consequences. So even if the Republicans don't lose their seats, let's say the primary challenger loses, the other politicians are watching, and they're going to be more likely to say, "You know, this clean energy thing. I don't really care that much about it. I don't really want to have such a hard reelection fight." Because politicians are like anybody else. They don't want to lose their jobs. So they don't really want to take positions on bills that are going to cause big funders to pull money away from them.

You have to understand that in Kansas, for example, Koch Industries gives money directly to candidates. It gives money to the Kansas Republican Party, and it gives money to the Kansas Chamber of Commerce. Both the Republican Party of Kansas and the Kansas Chamber of Commerce are huge funders. Together those are the top three funders of state politicians. So if you're on the wrong side of some issue against Koch industries, you're going to face an uphill battle as a Republican.

Ari:

Is money then the antidote to polarization?

Leah:

Well, one idea is that you could have interest groups funding on the other side, the Wind Coalition being an example of that. But more generally we need Democrats to be facing, for example, consequences for not being on the right side on climate change. You see this happening with Justice Democrats. Think about Alexandria Ocasio-Cortez. She was a primary challenger of a sitting Democrat. She ran on climate change, and then, of course, famously proposed the Green New Deal. She was funded very intentionally by this group that said, "Hey, if you're not on the right side on climate change, you're going to face consequences." There was actually a representative in Texas who almost lost a couple of month to a young woman named Jessica Cisneros similarly because he was on the wrong side on climate change.

So it's a question of, do you try to unpolarize on the right by making sure there's more

money into clean energy, and I think that's one important part of the puzzle, but also on the left, you can't have Democrats doing nothing on climate change for decades. There has to be consequences for being a laggard on climate change within the Democrat Party.

Ari:

So you're suggesting that making someone the ranking member of the Energy and Natural Resources Committee is not consequences.

Leah:

Well, are you thinking of Joe Manchin there? Is that what you're thinking of?

Ari:

Yeah, that's who I was thinking of.

Leah:

That's an interesting thing because supposedly Bernie Sanders was offered that seat and he declined it, and then Joe Manchin took it up.

Ari:

Huh.

Leah:

Yeah, I've seen some reporting on that. I think that Joe Manchin being in that position on the Senate side is very problematic. Let's say the Senate became Democratic, would he become the majority leader of that committee? I don't know. That would be very problematic in terms of trying to pass climate legislation. Yeah, Joe Manchin is a difficult one. Now, of course, some people might say in the case of Joe Manchin, you're unlikely to get a better Democrat. You'd just get a Republican. So these primary challenges can be tricky. But think about Bob Inglis. Bob Inglis was a Republican congressman who woke up to climate change while he was in office. Then exactly, he faced a massive primary challenger funded by the fossil fuel industry, and he lost. I think that sends a chilling message throughout the Republican ranks that you don't want to be on the wrong side on climate policy.

Ari:

I mean ultimately it seems like we do need something to happen from Congress. But we are where we are on that issue, so let's put that aside. We have a number of these states moving towards 100% clean energy laws. How far do you think that can take us? Because you weigh out in the book very nicely this scale of the challenge, the Narwhal curve. I would recommend everybody go and find the video that you posted on your Twitter feed I think in late April explaining how much renewable energy we need to build over the next decade or two. These state clean energy policies, these RPS policies, can those be the vehicle to getting us there?

Leah:

Yeah, great question. If people want to watch that Narwhal video, they can also google on YouTube, and it's on the Grist website on their YouTube channel. I did a lot of thinking near the end of writing the book about, what is a benchmark? What do we actually need to do to tackle the climate crisis? I think for a long time advocates were benchmarking against what was possible or what we already had on the books from a legal perspective. I can totally understand why they were doing that. But climate change requires action at a really unprecedented pace and scale, and I tried to help people understand that.

For example, I was just reading a great new working paper by Joe Stiglitz and a bunch of other colleagues which said that this year emissions might fall as much as 8%, which would be, of course, be the largest fall ever. It's only 8% given that literally the economy is shut down and we're all in our houses but still 8%. What people might not realize is that if we want to meet the 1.5 degree Celsius warming target, emissions need to fall about 8% every single year from now until 2030, and that's globally too. So the scale of this is just huge, and policy makers do not understand it. It's not very intuitive for them. So I try to lay that out with the Narwhal curve.

The take-home message is that, say, action's been great to bring down the cost of technology, to start the transition, but we're now in this conflictual stage where you're not going to sneak stuff by utilities anymore. The fog of enactment isn't going to operate for net metering or renewable portfolio standards anymore. We're in a straight up battle with utilities to try to amplify clean energy. My concern is that going piecemeal state by state and saying, "Oh, wow. Look at New Mexico and New York and Colorado and California. This are all fantastic leaders. They have 100% targets on the books," that is just not going to move us fast enough. Because you also have to think about Florida only having 15% clean electricity or West Virginia with about 5% or Ohio where I think about 2% of the electricity system comes from renewables right now. They just bailed out coal plants, got rid of their renewable portfolio standard, and got rid of their energy efficiency law.

Unless you have the federal government providing a kind of backstop, which is what the Clean Power Plan was supposed to be. When the Clean Power Plan was being discussed very actively and I was doing a lot of interviews for the book, it was amazing because legislators at the state level recognized that they couldn't just get rid of their renewable portfolio standard because then they wouldn't be able to comply with the federal law, with the federal benchmarks. So I do think that we need our federal government to be setting a floor for action, and then other states can roar on ahead and do more. But we are at a really critical moment here where we've got to accelerate the clean energy transition, and without the federal government acting, I do not know how we can do it.

Ari:

I think at the very least we need the federal government to be supportive of what states are doing. Obviously, that support isn't there right now, and we're seeing some things happening at the Federal Energy Regulatory Commission at FERC that I think are pulling the industry back to where it used to be and not to where it needs to go and, I think, where it's actually heading on its own, in part because of these state policies and in part because of the economics and in part just because of other factors in the economy. So that's not helpful. The other thing I'm concerned about is the siting issue, which is we need all these renewables, we need all these transmission, and states are really in charge of siting this infrastructure and can they even handle that task of just facilitating the construction of all the things we need.

Leah:

Yeah, great points. Well, FERC is quite terrible right now. I think it's so interesting because people who don't really know the utility sector might think, "Oh, well, wind and solar are cheap, so they'll magically happen." They forget that there's a lot of uneconomic coal plants that continue to operate because it makes sense for utilities to continue to operate them. They have debt and equity in those plants. They want to keep them running. Even if it might be cheaper and, of course, cleaner to erect a new facility tomorrow, like a wind plant, they're not just going to go and do that. So you see that most perniciously with the kind of MOPR rule that you sort of alluded to at FERC where it's like a subsidy for fossil fuel plants to keep operating. But also, as I talk about in my book in Ohio, there could be as much as $5 billion towards keeping three coal plants operating, just straight up subsidies. Because in Ohio, it's a restructured electricity market, and those plants have to compete. Again, it's not just the magic of economics where if it's noneconomic for them to run, they'd stop running. They literally got a huge subsidy from the state government. So those are huge issues in terms of slowing down the transition.

Then I agree with you, I actually do a lot of work on siting of wind energy. It's not something that's in my book, but I have published papers on this topic, and I have been doing a big project that I'm going to hopefully have under review soon trying to

understand how common are protests against wind energy. The good news from that work is that it's not as common as you might think. It's probably less than 10% of wind projects face protests. But I think that even one very prominent project, think of Cape Wind, this offshore plant off the coast of Massachusetts, that had such a huge protest against it. It really, I think, chilled the entire industry against building offshore wind. So one plant can make a huge difference.

In Ohio, for example, there were anti-wind activists in certain parts of the state. What they managed to do was to convince the legislature to stick a rule as a budget rider that changed the setback rule that made it three times farther from a property line for a wind project to be built. The consequence is that you basically cannot build a wind project in Ohio to this day. So local protests can spill over and affect the entire policy system for a state. I've done a lot of work on Ontario, Canada, which put a big push into wind and solar through feed in tariff program, and it also catalyzed an enormous amount of anti-wind groups in that province. The consequence is that eventually those anti-wind groups got the policy frozen.

So anti-wind, anti-transmission, anti-large-scale solar, these groups can have outsized impacts on projects and on policy. For those interested in that topic, I'd really recommend reading Russell Gold's book, Superpower, which tells the story of Michael Skelly trying to build a transmission line over the course of I think it's about a decade, and he doesn't end up building the project. So I agree 100%, Ari, that siting is going to be a huge issue and that a lot of states are not equipped to do it particularly for transmission lines that cross state borders.

Ari:

I'm doing a big project on transmission line issues where FERC has tried to introduce competition in the development process, and naturally the utilities are resisting that. They've fought this in multiple forums, and they're protecting the exclusivity that they have at the state level. A lot of states will literally, by law, only site utility projects, and utilities have sought to add these rights of first refusal so that will literally block non-utility developers. Then other states it just seems like by practice the utilities have various advantages as we've discussed including able to navigate that siting process that folks like Clean Line just aren't able to do.

I want to go back to something you said a little bit earlier. You said, "We're in this battle with the utilities for clean energy." As I've thought about this transmission issue, instead of fighting them forever, if the better option is just to buy them off like they did in New Mexico. While that's not going to be the most efficient option, but we do what we got to do and let's make progress that way. Plus, a lot of utilities can make money by building this stuff. Let's have them drop their defenses. We'll give them what they want.

We'll have the utility keep controlling the system because that's what they want, but at least we'll get the clean energy that we want.

Leah:

I'm not against that solution. I know there's a lot of people who are very against it because... In the conclusion of my book, I have a short section about public ownership and the campaigns that various groups have to try to change private monopoly utilities into some form of public ownership. I write about why I think that's a little bit of a fool's errand, even though some of the benefits might be that it puts pressure on utilities to be willing to come to the table to negotiate over some of the things you're outlining.

I think that the challenges are really this moral hazard issue where utilities get to continue to make bad investments. I mean if you build a new natural gas plant right now, how long are you going to assume it's going to operate for? 10 years? 15 years? Those costs are going to get pushed onto rate payers. I think there are ethical questions there not just about climate change but also about income inequality where a lot of people struggle to pay their electricity bills. One in three Americans struggle to pay their energy bills under normal circumstances let alone under the current crisis. So I think that there are some thorny questions. But I agree. We're probably going to end up buying a lot of these companies off and getting them to shut down their plants.

What I'm most concerned about is giving bailouts to fossil fuel companies and electric utilities where they can continue to operate their plants, which is what happened in Ohio in my book. I think that is the worst of all outcomes. We could be seeing that right federally with the CARES Act where there could be a lot of bailouts happening for fossil fuel companies. But if it's more like what happened in New Mexico where you're saying, "Okay, we're going to pay for your costs and you're going to shut down this plant," then that might not be the world's best outcome. However, the plant is shut down. So, yeah, I think there are going to be really thorny questions around stranded costs in the deep decarbonization of the electricity sector.

Ari:

Let me just be clear. That is not my preferred outcome.

Leah:

No, I know.

Ari:

I would like to minimize the role of utilities. They should own the local distribution grid and that's it. But we are in this time crunch and I do wonder if ultimately the utilities are going to end up being the big winners out of all this.

Leah:

Absolutely. It's not that I would be against having public ownership of these industries. It's just that we have very little time. Think about Xcel Energy. Xcel is one of the few utilities that has really seen the business opportunity that you've been talking about and has become quite proactive. They faced a threat from Boulder as well as, I believe, Minneapolis to exit their system and to create local municipally-owned utilities. Those efforts have not succeeded after a decade of campaigns in the case of Boulder. Maybe it would be better if it was owned locally and owned publicly. But changing the system is a Herculean effort, and given how difficult climate change is to deal with, I think it's probably better to try to transform their incentives and to transform their assets and worry less about ownership.

Ari:

I want to close by talking about lawyers. I teach a class called State Energy Law. These public utility commission orders are quite long. You can't assign a class to read a whole order, so you kind of have to pick which parts you're going to assign. I almost always leave the intro that lists all of the parties involved in the cases just to illustrate to students all these various interest groups that are involved in these cases. I think your book does a really great job of highlighting the importance not just of getting a law passed, but the real work happens after that, the implementation and then sometimes the litigation. There's a lot of lawyers behind the scenes in your book playing a lot of roles. So it seems like having lawyers is a necessary but insufficient condition here for successful clean energy policy. I just wanted to bring that to light.

Leah:

Those are great observations. Maybe, I guess, the lawyers, their whole bread and butter is implementation and lawsuits and everything else so after the reform stuff. I think a lot of the times what the public is paying attention to or politicians and policy makers is just enactment. What I try to point out is that so much of policy actually gets made after enactment. I'm sure lawyers know that like the back of their hand, but it's not necessarily known to every other sector how important those things are. I think sometimes the fossil fuel industry and electric utilities have better paid lawyers or lawyers who know more about the subject.

Ari:

Well, they certainly have better paid lawyers.

Leah:

Yes, not at all to denigrate the good guys. One of the solutions that I outline in my conclusion that might be of interest to your listeners is something that exists in California called the Intervenor Compensation Program, which is a policy that pays other groups to show up and advocate in the public interest. I learned a lot about this by talking for a long time with a lawyer from The Utility Reform Network, someone named Matthew Freedman who has been extremely pivotal in passing California's renewable portfolio standards and ramping them up over time. He's paid for a lot of his work by the Intervenor Compensation Program. So just like utilities, if they have money and costs to have their lawyers go to proceedings or whatever it is, they can get that money back, you can have a policy so that other groups can get the money back for the costs of intervening.

There's been an independent assessment of that program in California. This was back in 2013. It costs every Californian something like 17 cents a year for this program. It's just part of their electricity bills. It pays people back hundreds of millions of dollars in terms of keeping rates low. Of course, that doesn't even take into account all the benefits from dealing with climate change and air pollution, all those positive externalities. So I think more states should pass Intervenor Compensation programs and pay for the lawyers of the good guys because they don't often have the same kinds of resources to advocate on behalf of the environment, on behalf of consumer interests. That leaves us all a lot poorer both in terms of our electricity bills and in terms of the health of our environment.

Ari:

Well, I'm, of course, all for paying lawyers. I think it's a really interesting model. Some states right now have the problem of interest groups being denied intervention status, so even when they show up and want to participate, they're given limited rights or no rights at all to participate. In some cases, that's because, for example, a rate case is only for rate payers. So if you are some EV company for example, you're not a rate payer, and so you might be denied status. But I do think the California model that you bring up is definitely worth further exploration. More states should certainly be, at the very least, allowing robust participation, and then going that additional step of paying for it would be great. Well, Leah, we're going to leave it here. Thank you so much for joining us. The book, again, I recommend it. I bought mine as a Kindle copy, magically downloaded to my device one day. It's wonderful. Short Circuiting Policy is the name of the book. Thanks again for joining me.

Leah:

Thanks so much for having me on.

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